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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA

vs.

CASE NO.: 2:08-cr-65-MHT

JACK FURMAN DEAN, JR.,

Defendant.

* * * * *

SENTENCING HEARING

VOLUME II

* * * * *

BEFORE THE HONORABLE MYRON H. THOMPSON, UNITED STATES
DISTRICT JUDGE, at Montgomery, Alabama, on Friday, December 19,
2008, commencing at 1:08 p.m.

APPEARANCES

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Proceedings reported stenographically;
transcript produced by computer

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24	(The following proceedings were heard before the Honorable	
25	Myron H. Thompson, United States District Judge, at Montgomery,	
	Alabama, on Friday, December 19, 2008, commencing at 1:08 p.m.)	
	THE COURT: Is there any more evidence anyone would	
	like to put on with regard to the objections other than 69 at	
	this time, paragraph 69?	

1 MR. STUMP: Your Honor, no, not at this time.

2 MS. FREEMAN: Your Honor --

3 THE COURT: Anything else with regard to -- I believe
4 it's paragraph 26 we were addressing, too.

5 MS. FREEMAN: Your Honor, I believe that the government
6 would proffer, and we would accept their stipulation, that the
7 Beta tapes were produced in 1992.

8 MR. STUMP: That's correct.

9 THE COURT: Okay.

10 MS. FREEMAN: And Your Honor, I believe also, based on
11 part of the compilation that we just saw, I would renew my
12 objection to paragraph 26, which talks about the use of a -- use
13 of a person less than 18 to commit the offense. Just before we
14 broke, we -- Corporal Duckett said that there was no proof that
15 this long extended video that was taken by another minor was at
16 the direction of Mr. Dean.

17 THE COURT: Okay. Anything else?

18 MS. FREEMAN: As to those objections, that's it, Your
19 Honor.

20 THE COURT: As to whether the other minor in the video
21 was taking the video at the direction of the defendant, the
22 Court has reviewed the video, and I find that it was clear that
23 she was doing it at his direction. The way she did it, viewing
24 it in connection with the other videos, there's no way that a
25 girl of her age would have known how to do that video. It's

1 clear that she had learned it from her dad. It is also clear
2 that he was present, and it was also clear that she was doing
3 it. And I would think that anyone who has to do this should
4 view the video. It's evident from the video that she was doing
5 it at his direction.

6 MS. FREEMAN: Your Honor, I understand that the Court
7 is making that finding and a ruling against me. I strongly
8 disagree that there's any evidence of his instruction.

9 THE COURT: I strongly believe what I saw. I think
10 anyone who reviews that again, if you look at that video, you
11 can't reach any other conclusion.

12 Anything else?

13 There's no way a 13-year-old would make that video
14 without an adult.

15 MS. FREEMAN: Your Honor, I don't believe the proof was
16 that there was a 13-year-old involved.

17 THE COURT: Well, there's no question that her sister
18 was doing the video.

19 MS. FREEMAN: Yes.

20 THE COURT: And her sister was of a comparable age to
21 the victim.

22 MS. FREEMAN: Yes.

23 THE COURT: And there's no way that a girl at that age
24 could have made that video without an adult's direction. It's
25 just implausible. Just common sense tells you that.

1 Yes?

2 MR. STUMP: I'm sorry, Your Honor. Just a housekeeping
3 before I forget. I would like to have -- we've already admitted
4 Exhibit 1. I would like to orally move that it be placed under
5 seal.

6 THE COURT: It's placed under seal.

7 MS. FREEMAN: No objection to it being placed under
8 seal. I renew my objection to it being admitted into evidence.

9 THE COURT: The video is admitted for a number of
10 reasons. Number one is the words in the presentence report
11 cannot begin to capture what's on the video. There's only one
12 way to understand what's on that video, and that's to see it.
13 Words just don't begin to capture it. I make that as a finding
14 of fact.

15 Secondly, the video is relevant to a number of
16 objections, including paragraph 69. It's also relevant to
17 paragraph 27, which I've ruled on. And now I think we have
18 paragraph 26. It's less relevant to paragraph 26, but it does
19 have some relevance as well.

20 Finally, I think the video is relevant to, as I said
21 before, the defendant's contention that he loved the victim. I
22 also think the video is relevant for all of these reasons with
23 regard to 3553 factors.

24 So let's address paragraph 26, the vulnerable victim
25 paragraph. Let me hear your arguments on that.

1 MS. FREEMAN: Your Honor, I made the argument just
2 before we broke that there is already an enhancement based on
3 the victim's age. There is a separate enhancement based on the
4 custodial relationship between the victim and Mr. Dean. There
5 is also a separate enhancement based on sadomasochism. All of
6 those are in the presentence report.

7 THE COURT: Wait a minute. The sadomasochism I don't
8 think went to paragraph 26, did it?

9 MS. FREEMAN: That's 24, Your Honor. The age
10 enhancement is at paragraph 22.

11 THE COURT: Right.

12 MS. FREEMAN: The custodial relationship is at
13 paragraph 25.

14 THE COURT: Right. I did not remember your raising the
15 sadomasochism with regard to paragraph 26. I thought that was
16 raised with regard to paragraph 69.

17 MS. FREEMAN: Both, Your Honor. The fact is that all
18 of the arguments --

19 THE COURT: Wait. What's the sadomasochism? What
20 guideline is that so I can --

21 MS. FREEMAN: Your Honor, that is 2G2.1(b)(4). And
22 it's at paragraph 24.

23 THE COURT: 2G2 -- what -- 1(b)(4)? No, that's not
24 right, is it?

25 MS. FREEMAN: 2G2.1(b)(4).

1 THE COURT: Oh, 2G2. Okay. So you're raising this
2 also with regard to paragraph 26?

3 MS. FREEMAN: Yes, Your Honor, because the description
4 of what the probation officer and government contend makes the
5 vulnerable victim enhancement separately applicable relates to
6 all of these other facts about the conduct in this case.

7 THE COURT: How does -- how does 2G2.1(b)(4) go to
8 vulnerable victim? I still don't understand that.

9 MS. FREEMAN: Well, to the extent that there is --
10 there is an allegation of threats and an allegation of
11 brainwashing. Basically, I think that paragraph 26 in the
12 presentence report is saying that all of this conduct may -- or
13 that it itself caused an extra vulnerability. I believe that's
14 double counting.

15 I also would point out that there are some conclusions
16 included in paragraph 26, notably the third sentence related to
17 use of the term, in quotes, groomed. That, obviously, is the
18 probation officer's conclusion. There's nothing anywhere on the
19 record, there's no expert testimony, there's no discovery,
20 there's no PSI factual assertion that supports that.

21 THE COURT: Okay.

22 MS. FREEMAN: Your Honor, in addition, we simply
23 dispute that these threats were made.

24 THE COURT: What threats?

25 MS. FREEMAN: The threats described in paragraph 26.

1 THE COURT: Okay.

2 MS. FREEMAN: I believe Corporal Duckett addressed them
3 to some extent during her testimony.

4 THE COURT: Now, if we're going to go into whether the
5 threats -- alleged threats in paragraph 26 were made, are you
6 contending that he did not say that he threatened to kill her or
7 leave her mother if she told of these incidents? Are you taking
8 that -- are you contending that did not occur?

9 MS. FREEMAN: Yes, Your Honor.

10 THE COURT: And also are you contending that he did not
11 say that he would leave them with nothing if she told and that
12 they would be poor if she told?

13 MS. FREEMAN: Yes.

14 THE COURT: And also that he emphasized that he was her
15 only father and reminded her that her mother had already gone
16 through one failed marriage, suggesting that they would be
17 devastated upon another failed marriage? Do you contend that
18 that did not occur as well?

19 MS. FREEMAN: Yes, Your Honor.

20 THE COURT: What evidence do I have to support these
21 alleged threats?

22 MR. STUMP: Your Honor, we are prepared only to provide
23 additional testimony from Corporal Duckett on that matter.

24 THE COURT: Okay. Go ahead.

25 MR. STUMP: Okay. United States recalls Corporal

1 Duckett.

2 CORPORAL REGINA DUCKETT, the witness, having been duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. STUMP:

6 Q. Ma'am, I'll remind you, you're still under oath.

7 A. Yes.

8 Q. You were in court just now and heard the exchange back and
9 forth between the judge and defense counsel about some threats
10 and that kind of thing, right?

11 A. That's correct.

12 Q. Can you tell us what you learned as -- in the course of your
13 investigation about any threats that were made by this defendant
14 to the victim in the case?

15 A. Yes. According to the victim, in one of her statements she
16 did tell me that on multiple occasions the defendant did, in
17 fact, threaten to leave her mother and would leave them
18 penniless and homeless if she, in fact, did tell on him.

19 THE COURT: Now, I need to get context, so you need to
20 tell me when, what year, and approximately how old the victim
21 was at this time.

22 THE WITNESS: During her -- I believe it was the very
23 beginning, Your Honor. It was in her second statement that she
24 gave to me, and I don't know -- I don't remember or recall that
25 she remembered the exact year herself. It was just during the

1 course of this entire thing.

2 The threat level changed the older she got. Initially
3 it began with nobody would believe her because of a situation
4 that occurred with her stepsister --

5 THE COURT: Well, it's more helpful if either you or
6 someone else can tell me approximately how old she was when
7 these so called threats were made.

8 THE WITNESS: It was during the entire course of --

9 THE COURT: Okay.

10 THE WITNESS: -- these years, Your Honor.

11 THE COURT: Well, go ahead, and then we'll come back to
12 that.

13 A. Okay. I'm sorry. I know there was a situation involving a
14 stepsister where I believe that she was allegedly abused as a
15 child as well, and the defendant also used that against the
16 victim, Bonnie, saying that nobody believed what happened to
17 Amy, so why would anybody believe what was happening with her.
18 And then from there it escalated. He would buy her clothes and
19 things to make her feel pretty. She was only allowed to wear
20 those during the acts that were taking place in the videos, and
21 then he would take those clothes from her and not give them back
22 unless she performed further acts.

23 MS. FREEMAN: I'd object. This isn't even responsive
24 to the question.

25 THE COURT: Well, I'll allow it in to --

1 MS. FREEMAN: In addition, Your Honor, this is hearsay,
2 obviously, and it's not been established that it's reliable
3 hearsay.

4 MR. STUMP: Your Honor, the only person that could
5 testify to this other than Corporal Duckett or better than
6 Corporal Duckett, aside from the defendant himself, is the
7 victim in his case, and I am loathe to put her on the stand for
8 this particular objection.

9 THE COURT: Well, I really would like to know the age
10 at which this occurred. Would you like to talk to her to see if
11 she would be willing to do it?

12 MR. STUMP: Your Honor, I can just tell the Court right
13 now, she's unwilling to do it.

14 THE COURT: She is?

15 PROBATION OFFICER: Your Honor, I would also like to
16 add that if we're talking about just this one objection, it
17 would not change the guideline range at the end of the day. It
18 would still be life.

19 THE COURT: Oh, really?

20 PROBATION OFFICER: Yes, sir.

21 THE COURT: Okay. So you're saying this guideline
22 would not change anything?

23 PROBATION OFFICER: I believe it would result in a
24 two-level reduction to a 43. Forty-five minus two is 43. It
25 still would be a life term.

1 THE COURT: My main concern is that I just can't tell
2 when. If it happened during her early years, I think the
3 objection would apply -- I mean, I think the guideline would
4 apply, primarily because I think the additional vulnerability
5 came that he realized that she was dependent on her mother; that
6 he was a stepfather in there. That's different from these other
7 guidelines. But without the time factor, I'm a little reluctant
8 to do that.

9 MR. STUMP: Yes, sir.

10 BY MR. STUMP:

11 Q. Corporal Duckett, do you have anything in your case file
12 that would assist you in answering that question?

13 A. I can review the interview conducted with the victim, yes.

14 Q. If you reviewed it, do you think that there is a possibility
15 that you would find some evidence to suggest the time frame in
16 this particular --

17 THE COURT: I'm also concerned about the hearsay. This
18 is just so critical.

19 MR. STUMP: Yes, sir. Well, Your Honor, given the fact
20 that it wouldn't change the guideline, at this point, short of
21 prolonging this, and certainly short of calling the victim
22 herself, I would just concede the enhancement.

23 THE COURT: Okay. Then we'll -- I'll sustain the
24 objection to 27 because the government has conceded it, and I
25 think rightly so.

1 That leaves us with objection -- I've already ruled on
2 27. Twenty-six is withdrawn for -- resolved. So now we're up
3 to, what, 69?

4 MS. FREEMAN: Yes, sir.

5 THE COURT: Okay. What evidence do I have as to 69?

6 MR. STUMP: Your Honor, we would cite the CD or the DVD
7 that's already been viewed by the Court. We skipped over some
8 things, I don't think it's necessary for the Court to review
9 them, but I believe that the descriptions that we're relying on
10 are in the presentence report. I also have a few additional
11 questions for this witness.

12 THE COURT: Go ahead.

13 BY MR. STUMP:

14 Q. Corporal Duckett, do you know anything -- in the course of
15 your investigation, did you learn whether the victim had any
16 medical complications as a result of this offense conduct?

17 A. That's correct. According to her, she's had to have three
18 rectal surgeries as a result.

19 Q. I'm sorry. And could you slow down, please, for the court
20 reporter.

21 A. She's had three rectal surgeries as a result of some of the
22 offenses committed by the defendant.

23 Q. You were in court when we watched the video compilation
24 that's Exhibit 1, right?

25 A. Correct.

1 Q. Did that -- did what we see in court encompass all of the
2 conduct that can be considered cruel or brutal or inflicting
3 pain?

4 A. It touched on the majority of it, yes. There are numerous
5 videos involving the acts that we saw on that DVD. There are
6 several more involving the bondage, the role playing, the -- all
7 the acts that were performed, a lot of them came from
8 pornography videos that he had in his possession during the
9 search warrant. We have those videos. You can almost watch the
10 pornography video and watch what he did with the victim, and
11 they're almost identical. They even did role playing in
12 reference to it, and it escalated as the years went on.

13 Q. Can you tell us approximately how many videos you recovered
14 that were of evidence in this case?

15 A. We viewed 1330. I believe 275 were deemed as evidential,
16 and I believe somewhere around the number of 58 were juvenile
17 related.

18 MR. STUMP: Your Honor, if I could have a moment.

19 Your Honor, no further questions.

20 THE COURT: Cross?

21 MS. FREEMAN: Yes, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. FREEMAN:

24 Q. Corporal Duckett, did you obtain any medical records
25 relating to the victim?

1 A. No, I did not.

2 Q. Did you obtain -- did you interview any doctor or medical
3 personnel who had treated her?

4 A. No, I did not, but there's some video evidence that shows
5 the scarring.

6 Q. You did not obtain any medical evidence of the existence of
7 any surgery?

8 A. No, I did not.

9 Q. So you do not have confirmation of that assertion from any
10 source?

11 A. Just from the victim.

12 MS. FREEMAN: Your Honor, I would object to that
13 testimony and move that it be stricken.

14 THE COURT: What's your response?

15 MR. STUMP: Your Honor, it's clearly hearsay, but this
16 is a proceeding in which hearsay is allowed. I believe in this
17 case the information came directly from the victim herself.
18 Everything else that has come from this victim about this case
19 has been --

20 THE COURT: To be quite candid with you, I watched the
21 video, and I really don't need the medical evidence. I can see
22 that she was physically tortured. And I mean tortured. So I
23 consider the medical evidence, at best, redundant.

24 MR. STUMP: That's fine, then, Your Honor.

25 MS. FREEMAN: Your Honor, my other objection to the

1 enhancement or proposed enhancement is that there is no question
2 that there was no intercourse until --

3 THE COURT: No what?

4 MS. FREEMAN: There was no penetration until after the
5 age of 18. And much of what we have seen, first of all --

6 THE COURT: We're talking about which guideline, now?

7 MS. FREEMAN: Paragraph -- guideline 5K2.8.

8 THE COURT: Oh, okay. This is the heinous?

9 MS. FREEMAN: Paragraph 69. Yes, sir.

10 THE COURT: That there was no penetration until 18?

11 MS. FREEMAN: Yes, sir. That's what is described in
12 the presentence report. In addition, this video contained --
13 much of the more extreme conduct described in it, and I'm not
14 suggesting that any of it is less than extreme, is of conduct
15 that occurred after the age of 18.

16 THE COURT: Yes?

17 MR. STUMP: I want to make two points. One is that the
18 medical evidence that was just elicited is in the presentence
19 report at paragraph eight. There's been no objection --

20 THE COURT: Just a minute. Let me get the presentence
21 report. So what is your question, now? I mean, what are you
22 stating? I don't understand.

23 MR. STUMP: Your Honor, I just wanted to respond on
24 this objection that this medical evidence that we just addressed
25 is at paragraph eight of the presentence report. There was no

1 objection from the defendant to its inclusion in this report.

2 I'm looking towards the bottom of page four of my copy.

3 THE COURT: So you're saying it's in the report anyway,
4 you don't need it from this witness?

5 MR. STUMP: That's correct, Your Honor.

6 And I'd also address what Ms. Freeman just said about
7 penetration. I'm looking for it in here. I know that the fact
8 of the matter is that there was digital and anal penetration
9 prior to her 18th birthday. And I believe the witness can
10 testify to that, but I do believe it's also contained somewhere
11 in this presentence report.

12 THE COURT: That what?

13 MR. STUMP: I believe that the fact that there was
14 penetration prior to 18, although it may not have been vaginal
15 intercourse, that there was other penetration prior to the age
16 of 18. I believe that's in this particular presentence report.
17 In fact, I think it comes from a statement of the defendant.

18 THE COURT: I'm trying to understand what you're
19 saying. You're saying prior to age 18, there was no digital or
20 anal intercourse?

21 MS. FREEMAN: No, Your Honor.

22 MR. STUMP: Yes, Your Honor. There was.

23 THE COURT: There was?

24 MR. STUMP: I'm just trying to clarify that.

25 MS. FREEMAN: I'm not saying that.

1 MR. STUMP: Ms. Freeman said there was no penetration.
2 I believe that's incorrect.

3 MS. FREEMAN: And I'm not sure that I said that.
4 Paragraph eight is what Mr. Stump is referring to. The first
5 sentence refers to digital penetration at the age of 14. My
6 point is, Your Honor, for the enhancement proposed in paragraph
7 69, that has to involve something other than the conduct that
8 constitutes the offense. And there is nothing about the simple
9 conduct that constitutes the offense, which is a criminal
10 offense, which is damaging, but that equals the extreme conduct
11 described in 5K2.8 and recommended for enhancement in paragraph
12 69. The most extreme conduct which the government has presented
13 through the video all occurs after the victim is well past the
14 age of 18.

15 THE COURT: Okay. Let's talk about that for a second.
16 What about when he's whipping her? Was that before or after
17 18?

18 MR. STUMP: If I could address the question to the
19 witness.

20 THE WITNESS: Several of those were before, Your Honor.

21 THE COURT: Pardon me?

22 THE WITNESS: Several of the videos contained slaps,
23 and they were before her 18th birthday.

24 THE COURT: The one with the extensive whipping where
25 she's screaming and --

1 THE WITNESS: In reference to the video?

2 THE COURT: Yes.

3 THE WITNESS: I believe that was prior to her 18th
4 birthday.

5 BY MR. STUMP:

6 Q. Corporal Duckett --

7 THE COURT: But obviously, the rape that occurs later
8 when she's 27, obviously, that's after she was 18.

9 THE WITNESS: Correct.

10 BY MR. STUMP:

11 Q. Corporal Duckett, the portions of the video that we saw that
12 involved whipping as the Court described it, was that the
13 only -- the ones that we saw, are those the only ones that were
14 on any video that you seized?

15 THE WITNESS: No. There are several, several of that
16 activity.

17 THE COURT: Let me ask you this, Mr. Stump. In
18 applying guideline 5K2.8, do I only apply the conduct before 18,
19 or do I consider conduct after 18?

20 MR. STUMP: Your Honor, I believe this --

21 THE COURT: That is, conduct towards the victim.

22 MR. STUMP: Your Honor, I believe this can apply to all
23 conduct in the case, all relevant conduct. I don't know that
24 there's anything in the specific guideline, 5K2.8, that says
25 that. I believe this would be in the relevant conduct portion

1 of the guidelines.

2 THE COURT: Let me ask probation this. How much did
3 you increase the guideline range as a result of 5K2.8?

4 PROBATION OFFICER: The truth of the matter, Judge, is
5 I did not increase the guideline range because of that. What we
6 do is we point out to the Court circumstances and situations
7 which the Court can consider in his deliberations in imposing
8 sentence. And at the very beginning of that presentation, it
9 states that this does not necessarily constitute a
10 recommendation by the probation officer. I did not make a
11 recommendation for the enhancement.

12 THE COURT: Why am I considering this if probation
13 didn't even recommend an increase based on 5K2.8?

14 MR. STUMP: Your Honor, I don't think it's necessary
15 for the Court to consider it. We have a guidelines range of
16 life. The statutory maximum is 30 years. The probation office
17 is recommending 30 years. I'm simply anticipating that the
18 defense is going to ask this Court for something less than the
19 guideline range, and I believe that this is relevant to the
20 Court's determination on that.

21 THE COURT: That would be more of a *Booker* issue,
22 wouldn't it? Something less than the guideline range?

23 MR. STUMP: That's -- I believe that's going to be a
24 *Booker* issue, yes, Your Honor.

25 THE COURT: Right. So I don't -- to me, this issue is

1 moot as far as calculating the guidelines. If I rule either
2 way, the guidelines are going to remain the same.

3 MR. STUMP: Yes. I believe that's correct, Your Honor.

4 THE COURT: Then I'll sustain the defendant's
5 objection. Anything else?

6 MS. FREEMAN: No, Your Honor.

7 THE COURT: So what's the guideline range? I've ruled
8 on all the guidelines issues, haven't I?

9 PROBATION OFFICER: Your guideline range is 30 years.

10 THE COURT: Okay. And what is the -- no. I'm sorry.
11 What is the --

12 PROBATION OFFICER: The total offense level is 43.

13 THE COURT: Total offense level is 43.

14 PROBATION OFFICER: And your criminal history category
15 is I.

16 THE COURT: And that gives us a guideline of what?

17 PROBATION OFFICER: Thirty years.

18 THE COURT: Thirty?

19 PROBATION OFFICER: Yes, sir. It absolutely would be
20 life, but the statutory maximum is 30 years. Twenty --

21 THE COURT: The guideline is 30 years here?

22 PROBATION OFFICER: Yes, sir. Twenty years and ten
23 years consecutive.

24 THE COURT: Twenty and 10.

25 The Court finds that the total offense level is 43, the

1 criminal history category is I, giving us an actual guideline of
2 30 years because the guideline range is life. And the question
3 now is do I vary from the guideline.

4 MS. FREEMAN: Your Honor, I just would -- the witness
5 is still on the stand. Is she --

6 THE COURT: Okay. Any more questions for her?

7 MS. FREEMAN: No.

8 THE COURT: You may step down.

9 So now the question is, do I vary from the guidelines
10 one way or the other. And you have evidence on that? Do you
11 have any more evidence to present on this issue?

12 MR. STUMP: Yes, Your Honor. I would like -- I have a
13 statement from the victim in this case that I would like to read
14 for the Court.

15 THE COURT: Go ahead.

16 MR. STUMP: This is dated December 19th, 2008.

17 I would like to start out by saying that I would rather
18 be reading this myself. However, it is not in my best interests
19 since I am now ten weeks pregnant. With that said, I just want
20 to say that over the past year, it has been very difficult for
21 me. I have had so much to deal with both emotionally and
22 physically. I lost a family I had for 19 years, and I'm
23 watching my mother go through very tough times. I was so scared
24 to tell and report my stepdad, Jack, because I prayed every day
25 the abuse would stop. My mom married this man and he started

1 raising me at the age of eight. I tried to pretend that the
2 abuse and threats would all go away and that I could one day
3 have a normal life. I finally realized that my life was in
4 danger and that I had to tell someone and seek help. I now know
5 that this was the right thing to do. My past has been relived
6 many times over the past 15 months since this has all come out
7 in the open. I have had to watch things that were videoed that
8 I don't remember ever happening. Apparently, the videotaping
9 started while I was sleeping at the age of 10. I was not aware
10 that he started doing things to me at such a young age. That
11 being said, I thought that one trial would be hard enough to
12 face, but now I am facing two. Jack also had a friend that was
13 involved that started abusing me at the age of 13. This was all
14 recorded on video, and now I have this trial to face as well. I
15 tried to forget about that happening to me because Jack told me
16 that he destroyed all the evidence, and he stated that I would
17 never have to do this again. The detectives found several
18 videos, and now that is being relived as well. I have had
19 nightmares and dreams and still have to think of all the stuff
20 that has happened to me. As far as my personal health is
21 involved, I had to have three rectal surgeries within the year
22 of 2003. My bladder has been stretched twice, and I also have
23 chronic endometriosis and interstitial cystitis. I was in
24 denial that this was all triggered by my history of abuse. I
25 was recently told by my doctor that my history explains why I

1 have had so many health problems. My husband and I had to try
2 for almost two years to finally have a baby. I have restless
3 nights due to bladder spasms. In the past six months, I had to
4 have bladder treatments and tests to find out if I would be able
5 to have a baby. This baby is our miracle child that we thought
6 could never be possible. This isn't just about what happened to
7 me, because my husband had to deal with the shock of losing his
8 father-in-law, barber, and someone he trusted. I never wanted
9 anyone to go through so much hurt. But the fact remains that
10 Jack made a decision, and he never denied what he did. I was
11 brainwashed and had to act out his fantasies that were forced
12 upon me with behind-the-scene threats. I know that I can't make
13 this go away. But in making your decision, know that this is
14 not only about the crime he committed against the law, but the
15 hurt that his entire family is dealing with. I do not consider
16 myself as a victim. I claim to be an overcomer. I have fought
17 all of my life to get through this. Today is my day for
18 closure, and I hope that everyone here will understand that I am
19 a human being just as you are. I would never want to be the
20 blame for his kids losing their father, but know if I had told
21 years ago they wouldn't be able to have him in their lives as
22 long as they did. To you, Jack, I only wanted to have a father
23 in my life because my own father could not do all he needed to
24 do due to his own issues. You were a great dad to all your
25 other kids, and I never did understand why you couldn't just be

1 a dad to me as well. I hoped that you would change, but it only
2 got worse. I lost my biological daddy last November, so now he
3 can't be there to walk me through this difficult time in my
4 life. As I close this, I just have to say that today I know
5 justice is being done no matter what happens. I am still alive,
6 and I am a wonderful testimony of how the Lord has carried me
7 through this. If I hadn't been through everything that I've
8 been through, I wouldn't be the person I am today. Sincerely,
9 Bonnie Lindsey.

10 THE COURT: Is that it?

11 MR. STUMP: That's it, Your Honor.

12 THE COURT: I'll hear from the defendant.

13 MS. FREEMAN: Yes, Your Honor.

14 THE COURT: You have witnesses?

15 MS. FREEMAN: Yes, I do, Your Honor.

16 THE COURT: Let me hear them.

17 MS. FREEMAN: Yes. Jack Dean.

18 JACK F. DEAN III, the witness, having been duly sworn,
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MS. FREEMAN:

22 Q. Mr. Dean, could you please state your full name and your
23 relationship to the defendant, Jack Dean.

24 A. Jack Furman Dean III. I'm his son.

25 Q. And can you tell us how old you are.

1 A. Twenty-nine.

2 Q. And where are you living now?

3 A. I just recently moved to Mississippi.

4 Q. How are you employed?

5 A. The U.S. Air Force.

6 Q. What do you do with the U.S. Air Force?

7 A. I'm an instructor for computer networking.

8 Q. Are you married?

9 A. Yes.

10 Q. And do you have any children?

11 A. Two.

12 Q. Can you tell us and tell the Court what your relationship
13 with your father, the defendant, has been.

14 A. He was an outstanding father. He was the person that I
15 always looked up to. He's always been there for me, and I
16 continue to hold him in high regard.

17 Q. Can you tell the Court, what are some of the things that he
18 did that make you believe that he was an outstanding father?

19 A. He raised five kids while holding three jobs. He was
20 constantly working all the time, but yet he still had the
21 energy and -- to take us all out and, you know, do things with
22 us and always have a good time and most of the time it was by
23 himself. He would take -- you know, bundle us all up in a van
24 or station wagon, and we would go skating or bowling or
25 whatever. In my current -- the past couple of years, I've been

1 stationed away from him, and he's borrowed whatever vehicle he
2 possibly could, even though it possibly couldn't even make it,
3 to us and -- just to come and see us and spend time with my
4 kids.

5 Q. When you refer to the five children your father raised, can
6 you tell us who they were.

7 A. Well, I'm the oldest of five. My sister, Amy; my
8 stepsister, Bonnie; my stepbrother, B.J., and my half-sister,
9 Lauren.

10 Q. And during the time that you were growing up, did you confer
11 with your father about life decisions that you were making?

12 A. Yeah.

13 Q. Did you talk to him about going into the military?

14 A. Yes. It was a decision I took to both my -- both of my
15 parents. They helped me -- they let me lead my own path, but
16 they also helped guide me. Initially in the military, when I
17 first got in, I was really scared. He and my mother were both
18 the people I would call for comfort, and that's why -- how and
19 where I am today, ten years later.

20 Q. So you've been in the Air Force for ten years now.

21 A. December 2nd was ten years.

22 Q. And what is your rank?

23 A. E5, staff sergeant.

24 Q. And you are still in -- well, how would you describe your
25 present relationship with your mother and your father?

1 A. I still love them both dearly.

2 MS. FREEMAN: No further questions, Your Honor.

3 THE COURT: Cross?

4 CROSS-EXAMINATION

5 BY MR. STUMP:

6 Q. Good afternoon, Mr. Dean.

7 A. How's it going.

8 Q. Pretty good.

9 You love your father no matter what, right?

10 A. Yes.

11 MR. STUMP: No further questions.

12 MS. FREEMAN: I'll call Ron Adams. You can step down,
13 Mr. Dean.

14 RON ADAMS, the witness, having been duly sworn, testified
15 as follows:

16 DIRECT EXAMINATION

17 BY MS. FREEMAN:

18 Q. Mr. Adams, what is your relationship to the defendant, Jack
19 Dean?

20 A. He's my brother-in-law.

21 Q. And are you married to his sister?

22 A. Yes, ma'am.

23 Q. What is his sister's name, your wife?

24 A. Linda Gail Dean Adams.

25 Q. How long have you known Jack Dean?

1 A. Little over 30 years.

2 Q. And during that time, have you lived in the same community
3 as Jack Dean?

4 A. Not in the past 12 to 13 years.

5 Q. But for the first approximately 15 to 20 years, you did?

6 A. Yes.

7 Q. How often was your contact with Mr. Dean during those
8 earlier years?

9 A. We used to play golf and games and everything. That's about
10 all I remember.

11 Q. So would you see him every week, every day? How often?

12 A. Saw him quite a bit. He used to -- he cuts my hair, and we
13 had a lot of fun together.

14 Q. Can you describe what you know of Mr. Dean's life during
15 that time.

16 A. He was a loving person. Took care of his children. He
17 worked hard. I used to work two jobs for quite a while. He's
18 worked three for a long time. I didn't understand how he could
19 do that so long and have so much energy, plus take his children,
20 you know, and do different things with them. I always had to
21 work too much, you know, to do it for mine, but he always seemed
22 to have time.

23 Q. What was -- in terms of your relationship with him,
24 obviously, you're his brother-in-law, and you engaged in social
25 activities with him. Did you have any deeper friendship?

1 A. I would do anything for him as long as it was right and
2 according to law, you know. I love him very much.

3 Q. During the last 12 or so years, have you lived in another
4 community from Mr. Dean?

5 A. Yes.

6 Q. And where have you been living?

7 A. Andalusia.

8 Q. How often do you see -- have you seen him since you began
9 living in Andalusia?

10 A. Didn't get to see him very much because I worked a lot and
11 lived out of town, but occasionally we would play some golf.

12 Q. Would you --

13 A. I'd get a hair cut occasionally.

14 Q. Would you see him several times a year?

15 A. That's hard to pin down. Could be close.

16 Q. Okay. And can you describe to the Court what you believe
17 Mr. Dean has provided to you as a friend and brother-in-law.

18 A. Seeing him work so hard and do what he's done, I have -- I
19 had three girls, and it seemed like he could do more for his
20 than I could for mine. And I was sensitive to that because my
21 parents didn't have a lot of time with me when I was a child, so
22 I could see what he was doing and wished I could do the same.
23 But he's always worked hard, so I work hard and hardly ever miss
24 any time. But I've always looked up to him and respected him.
25 He's been -- he's just meant a lot to me.

1 Q. Would you say that you love him very much?

2 A. Yes.

3 MS. FREEMAN: No other questions, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. STUMP:

6 Q. Mr. Adams, good afternoon.

7 A. Yes.

8 Q. You said you've lived in Andalusia for the past 12 or 13
9 years?

10 A. I live in Andalusia now. I lived in Rose Hill, about 12
11 miles out in the country. But we just moved to Andalusia about
12 two or three months ago, you know, about -- it's about the same
13 neighborhood.

14 Q. And during those 12 or 13 years, you had just sort of
15 occasional contact with Mr. Dean?

16 A. Right.

17 Q. Now, you said that you kind of looked up to him in a way for
18 the way he was with his girls?

19 A. Jake and B.J. and all, he took them to movies and stuff. He
20 spent time with them. I didn't do like he did as far as
21 spending time -- taking them to do things is what I'm speaking
22 of.

23 Q. You know something about why we're here today, right?

24 A. Yeah. Yeah, from him being in jail, yeah.

25 Q. Yeah. I mean, even though you weren't there the last 12 or

1 13 years, you've now found out that he was sexually abusing his
2 stepdaughter, right?

3 A. I found out about the allegations, I think, last September,
4 if I'm correct, when he got arrested.

5 Q. Well, you know they're not allegations anymore. You know
6 he's been convicted.

7 THE COURT: What's the purpose of this?

8 MR. STUMP: No further questions.

9 MS. FREEMAN: I have no other questions for Mr. Adams,
10 Your Honor.

11 THE COURT: You may step down.

12 MS. FREEMAN: Your Honor, I would call Nancy Cutts.

13 NANCY CUTTS, the witness, having been duly sworn, testified
14 as follows:

15 DIRECT EXAMINATION

16 BY MS. FREEMAN:

17 Q. Mrs. Cutts, your last name is spelled C-U-T-T-S?

18 A. That's correct.

19 Q. And what is your relationship to Mr. Dean?

20 A. Furman is my nephew. He is the son of my oldest brother,
21 Jack Furman Dean, Sr., now deceased.

22 Q. And I don't want to ask your age, but are you close in age
23 to Jack Dean, the defendant?

24 A. I am close. I'm 64.

25 Q. Okay. Were you raised near him when you were both growing

1 up?

2 A. Yes. He and I were raised up near Legrand, Alabama. He
3 lived just up on the next hill from us.

4 Q. As you were growing up, how often did you see him and have
5 contact with him?

6 A. I probably saw Furman at least every other day if not every
7 other day. Roughly, I guess -- five years older than he, and we
8 played a lot together because there were not many children in
9 our neighborhood.

10 Q. And do you still live in that area or --

11 A. I live here in Montgomery.

12 Q. How long -- have you both lived in Montgomery at the same
13 time for the last several years?

14 A. Oh, yes.

15 Q. So how many years have you both lived in Montgomery?

16 A. I've lived in Montgomery since 1963.

17 Q. And was he here at that time, too?

18 A. Yes.

19 Q. So during the times these last 40 years when you've both
20 lived in this community, how often have you seen him?

21 A. We have not seen each other very often. We became involved
22 in our own families, I guess, and we basically saw each other at
23 family reunions, family gathers -- gatherings.

24 Q. And would those events be held a couple of times a year at
25 least?

1 A. Probably. Once in the summer and then around Christmas
2 time.

3 Q. What do you know of Jack Dean's life during the time he's
4 lived here as an adult in Montgomery?

5 A. I felt he loved his family. I knew he worked three jobs at
6 times to support them. I just thought he loved his family.

7 Q. Have you ever called on him for help or support in any of
8 your life events?

9 A. No, but I knew he was there if I needed him.

10 Q. And can you describe the kinds of jobs that he held?

11 A. He drove the school bus for the Montgomery public school
12 system, he was a barber, and I believe he cleaned a church at
13 one time.

14 Q. And did you ever have occasion to visit with the rest of his
15 family?

16 A. Yes. His mother I visited some. Visited some with his
17 sister.

18 Q. And do you know of their relationship with him?

19 A. I think their relationship was strong. They had a bond,
20 especially after his dad died.

21 Q. Now, do you know his mother well?

22 A. I do.

23 Q. Would that be Carolyn Dean?

24 A. That would be Carolyn Dean, yes.

25 Q. And am I correct that she's in her late seventies?

1 A. I believe that's correct.

2 Q. And are you also aware of what her physical health is?

3 A. I think she's declining somewhat.

4 MR. STUMP: Note an objection to the relevance of this
5 line of questioning.

6 THE COURT: Overruled.

7 BY MS. FREEMAN:

8 Q. Did you have any discussion with her about whether or not
9 she could be here today?

10 A. No, I did not discuss that with her.

11 Q. What has been your opinion in the past of Jack Dean as a
12 person you've known and loved for all these years?

13 A. I love Furman. He's my nephew. I'm shocked at what I hear
14 in the court today, but that doesn't keep you from loving
15 someone. And in the past, I guess I've not understood that, how
16 people could love someone when they were accused of such
17 horrendous acts, but people are people and they do wrong
18 sometimes. But you still love them.

19 MS. FREEMAN: No other questions, Your Honor.

20 THE COURT: Thank you. Do you have any cross? I'm
21 sorry.

22 MR. STUMP: No, sir, Your Honor.

23 THE COURT: Thank you. Next witness.

24 MS. FREEMAN: Linda Adams, Your Honor.

25 THE COURT: Ms. Adams.

1 LINDA ADAMS, the witness, having been duly sworn, testified
2 as follows:

3 DIRECT EXAMINATION

4 BY MS. FREEMAN:

5 Q. Ms. Adams, could you please tell the Court who you are and
6 what your relationship is with Jack Dean.

7 A. My name is Linda Gail Dean Adams. I'm sorry.

8 THE COURT: Would you like some tissue? Oh, she has
9 some.

10 A. I am his sister.

11 Q. And are you older or younger than your brother, Jack Dean?

12 A. I'm younger. I'm three and a half years younger.

13 Q. Where do you live?

14 A. I live in Andalusia.

15 Q. And are you employed outside the home in Andalusia?

16 A. Well, me and my mother do houses.

17 Q. And is your mother Carolyn Dean?

18 A. Pardon?

19 Q. Your mother is Carolyn Dean?

20 A. Yes, she is.

21 Q. When you say you do houses, can you describe what that
22 means.

23 A. Well, we clean several -- you know, a few houses, several
24 houses together.

25 Q. Do you have any children?

1 A. Yes, I do. I have three girls.

2 Q. And this is your husband, Ron, who testified just a few
3 moments ago?

4 A. Yes, ma'am.

5 Q. Can you tell me what kind of work Ron does.

6 A. My husband works at Shaw Industries down in Andalusia. It's
7 a place that makes material that makes carpet.

8 Q. During the time that you have lived in Andalusia, have
9 you continued to have close contact with your brother, Jack
10 Dean?

11 A. Yes, ma'am. Yes, ma'am. He used to cut my hair, and I
12 would go over sometime and me and him would have lunch sometimes
13 together.

14 Q. Has he ever offered assistance or help to you since you-all
15 have been adults?

16 A. Well, when my children were little, there was a time that we
17 couldn't afford to buy our children Christmas, so my brother
18 bought every one of my girls Christmas.

19 Q. Do you have any other brothers or sisters?

20 A. No, I don't. It's just me and him.

21 Q. Was there a period of time when your brother lived with you
22 as an adult?

23 A. Yes, ma'am. When him and his first wife separated, we all
24 moved in together, you know, and we helped one another.

25 Q. Now, were his two older children with him at that time?

1 A. Yes, ma'am.

2 Q. So am I correct that he had custody of his son and daughter
3 from his first marriage?

4 A. Yes, ma'am.

5 Q. How old were they?

6 A. At that time?

7 Q. Yes, ma'am, at the time you moved in -- you were all
8 living --

9 A. To be honest, I don't remember. I really don't.

10 Q. Were they in school?

11 A. They were before school. Yes, ma'am. They were young -- it
12 was before they went to school.

13 Q. So they were preschoolers?

14 A. Yes, ma'am.

15 Q. Okay. And were you married at that time?

16 A. Yes, I was.

17 Q. And so you and Ron Adams and your three daughters and Jack
18 Dean and his two preschool children lived together for a time?

19 A. Right.

20 Q. Did Mr. Dean help you and your husband with anything during
21 that time?

22 A. Only that time that stands out in my mind. I'm sure there
23 are several times he did, because we were all really more or
24 less to help each other.

25 Q. Was there ever a time when you had any concerns about your

1 children that you went to Mr. Dean about?

2 A. No, ma'am.

3 Q. Was there any time when he helped any of your children with
4 any of their growing-up issues?

5 A. My youngest daughter, she got married. She was married to a
6 boy that was into drugs, and she got into it, too. And my
7 brother came all the way down there, and he talked to his
8 niece. And if it hadn't been for my brother and seeing him the
9 way that he was concerned, the love and the compassion he had
10 for my daughter -- he knew -- he knew that his niece was in
11 trouble, and he asked her to please stop doing what she was
12 doing.

13 Q. Can you tell the Court who else is present in the courtroom
14 today? You've been --

15 A. My children? My oldest daughter is Amanda. She's here. My
16 next to the oldest is here, Wanda, and then my youngest is
17 Christy.

18 Q. And all three are present here in court?

19 A. Yes, ma'am.

20 Q. Okay. And do you know the other people who are sitting here
21 near your daughters?

22 A. The other -- that are sitting with her?

23 Q. Yes, ma'am.

24 A. That is Jake's wife that's beside my daughter. That's
25 Jake's mother, Sandy, and that's Amy, Jack's daughter. That's

1 Jack, Jr. or the third, and that's Christy beside my husband,
2 and that's Ron Adams.

3 MS. FREEMAN: No other questions, Your Honor.

4 THE COURT: Anything from the government?

5 MR. STUMP: No, sir.

6 THE COURT: I have a question.

7 THE WITNESS: Sure.

8 THE COURT: I think you've pretty eloquently said why
9 you still love your brother.

10 THE WITNESS: I do.

11 THE COURT: And I remember the comments that the victim
12 made about how she hoped that no one would say that she had
13 taken a father away from his children. I would assume that that
14 love for your brother extends to the victim as well?

15 THE WITNESS: Yes, it does.

16 THE COURT: And I would assume that the people you've
17 mentioned, including yourself, will continue to love the victim
18 just as much as you love your brother?

19 THE WITNESS: I do love her. Yes, I do. I know -- I
20 have had numerous conversations with my brother, and I know that
21 he feels -- I don't think anybody could punish him more than
22 he's doing it to himself. My brother is a -- he -- this past
23 year, he has gotten in with the Lord. I know he's gotten away
24 from the Lord, but he is back with the Lord. And I know there's
25 things that -- I know what he has done, sir. I know what he's

1 done.

2 THE COURT: Right. Well, I really wanted to get more
3 at your feelings towards the victim of this.

4 THE WITNESS: I don't agree with what's happened.
5 Okay?

6 THE COURT: You say you don't agree with what's
7 happened. What --

8 THE WITNESS: I don't agree, and I know my brother
9 knows what he has done. I know -- I don't know everything, you
10 know. I won't ever know everything. But I do feel the hurt.

11 THE COURT: Yes.

12 THE WITNESS: I do.

13 THE COURT: Well, there is no question that she is
14 entitled to your unmitigated, full love.

15 THE WITNESS: Yes, sir.

16 THE COURT: I can assure you of that. I have seen the
17 evidence. And she is entitled to be loved by you, perhaps even
18 more so than anyone else in light of what she's gone through. I
19 think she is an incredible woman. I admire her a lot. And of
20 all the people in this courtroom, I'll tell you, one of the
21 people I admire the most, if not the most, is the victim in this
22 case. And I think you should, too. Take my word on that. And
23 I hope that everyone here on that side of the courtroom knows
24 just what a remarkable woman she is.

25 Thank you.

1 MS. FREEMAN: Your Honor, I call David Ghostley.

2 THE COURT: Yes.

3 DAVID GHOSTLEY, the witness, having been duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MS. FREEMAN:

7 Q. Dr. Ghostley, could you please describe your professional
8 role.

9 A. Yes. I'm a licensed psychologist in the state of Alabama.
10 A certified forensic examiner by the state of Alabama. I
11 interviewed Mr. Dean at the Montgomery jail and did a
12 psychological evaluation.

13 Q. And where did you obtain your -- you have a Ph.D; is that
14 correct?

15 A. Yes. I earned my doctorate at Argosy University in Atlanta,
16 Georgia. Did a lot of -- did a couple years of practical work
17 at Emory University. Did a forensic internship at
18 Chattahoochee, Florida. Stayed on there for another year,
19 completed my doctorate, went on and did about eight months as a
20 prison psychologist, and then I've been now in private practice
21 for roughly five years.

22 Q. And what prison were you assigned to when you were working
23 as a prison psychologist?

24 A. I was the supervising psychologist at both Ventress and
25 Easterling.

1 Q. What is required to obtain a license from the state of
2 Alabama as a clinical psychologist?

3 A. You have to pass -- well, you have to have a doctorate in
4 psychology, a Ph.D, SID, or an Ed.D. You have to pass a
5 national exam that has a probably 50 percent fail rate the first
6 time. And then you have to pass a state law exam as it pertains
7 to the practice of psychology.

8 Q. And what is required to obtain a certificate or to be
9 certified by the state of Alabama as a forensic examiner?

10 A. That is a three-day course in law pertaining to forensic
11 evaluations, and it -- you have to pass two examinations at the
12 end of that three-day period.

13 Q. Now, are you required to engage in any certain type of
14 employment or continuing education in order to maintain your
15 certifications from the state of Alabama?

16 A. Yes. I have to provide the state department of mental
17 health and mental retardation four reports a year, and I have
18 to -- and I attend a continuing education class at Taylor Hardin
19 Secure Medical Facility in Tuscaloosa once a year in addition to
20 keeping up my CEUs from my clinical license.

21 Q. And CEUs are your continuing education units?

22 A. Yes. We have to have 20 a year.

23 Q. While you were at Ventress, what was the nature of your
24 professional work?

25 A. I was -- I supervised the mental health staff there: A

1 psychiatrist, a registered nurse, an admin person at both
2 facilities -- the staffs were different -- and a counselor, a
3 counselor also there. The staffs were slightly different at
4 each facility. We would share psychiatrists sometimes. The
5 facilities are located maybe 30 miles apart in Clio and Clayton,
6 Alabama.

7 Q. Were you involved there in providing treatment --

8 A. Yes.

9 Q. -- or in --

10 Were you also involved in providing assessment for
11 corrections purposes?

12 A. This was mostly treatment oriented. Did some assessment,
13 but very little.

14 Q. Since you have been in private practice, have you routinely
15 provided or conducted forensic examinations?

16 A. The bulk of my practice is clinical work. I see people with
17 insurance that have problems, you know, depression being one of
18 the most common things that I assess. People -- assessment is
19 what I do mostly. I do also provide counseling and
20 psychotherapy for people. That's the bulk of my work. This is
21 probably, you know, 15 percent of my work, maybe 20.

22 Q. When you say this, you're referring to the type of
23 examination you conducted for Mr. Dean?

24 A. The forensic type, yes.

25 Q. Now, in reviewing and meeting with Mr. Dean, what -- in --

1 excuse me. Let me back up. In the course of your professional
2 work, do you use assessment tools; that is, to a lay person, I
3 guess, I would call it a questionnaire or form --

4 A. Yes. We try to use standardized instruments to help us in
5 making predictions and to help us be more comprehensive. A lot
6 of times some of these questions -- some of these instruments
7 will ask questions that we wouldn't get to during the course of
8 an evaluation, or we just might leave out, human error, so we
9 get sometimes more thorough with the instruments that we use.

10 Q. And when you met with Mr. Dean, what instruments or
11 assessment tools did you use?

12 A. I used two instruments that predict recidivism where sexual
13 offenses have occurred.

14 Q. And what are those two instruments?

15 A. I used the Minnesota -- I don't have my report right here.
16 I'm not recalling the name of it.

17 MS. FREEMAN: Your Honor, may I approach?

18 A. The MSOST is, I believe, the acronym used for that test.
19 Minnesota Sexual Offender Screening Tool Revised. I used that
20 one and the Static 99.

21 Q. And what is the -- are both of those geared towards
22 assessing recidivism?

23 A. Yes.

24 Q. And can you describe what you would mean as recidivism in
25 the case of a sexual offender?

1 A. What you're trying to do is predict a likelihood or the
2 likelihood that the accused would reoffend if released.

3 Q. Have you used those instruments in the past with other
4 people?

5 A. Yes, but very limited.

6 Q. And can you tell us what use or weight is given to them by
7 members of your profession?

8 A. The weight? These two are very commonly used in court
9 proceedings. In consultation with a couple of more experienced
10 psychologists that I know in the field, recommended these two
11 tests.

12 Q. And when you used those tests with Mr. Dean, what did they
13 determine?

14 A. They found a less-than-average risk of reoffending, but
15 there -- they can't guarantee that he's not a risk at all.

16 Q. Is there any instrument on the planet that can make a
17 guarantee --

18 A. No.

19 Q. -- regarding human behavior?

20 A. No. They can only give a statistical prediction.

21 Q. And I'm looking at page three of your report. Is it correct
22 that the statistical prediction reached by the Static 99 was
23 that Mr. Dean had less than a five percent chance of recidivism
24 during his first five years?

25 A. Yes. The verbiage they use is less than five percent chance

1 of sexual reconviction. I'm not sure if recidivism and
2 reconviction are the same thing.

3 Q. And was the Minnesota Sexual Offender Screening Tool also
4 similarly reaching a conclusion that he had a less-than-average
5 risk --

6 A. Yes.

7 Q. -- or a low risk of recidivism?

8 A. That's right.

9 Q. Now, based on your interview with him and your use of those
10 tools in the past and at that time, do you believe that that
11 conclusion is reliable to the extent that any instrument can
12 make such a recommendation?

13 A. Yes. It has a -- there is a reliability to this, and I want
14 to say it's roughly 40 percent reliable.

15 Q. Now, during your interview with Mr. Dean, am I correct that
16 you also discussed the offense and his personal background with
17 him?

18 A. Yes.

19 Q. And can you tell the Court whether or not he expressed any
20 responsibility for the charges he was facing?

21 A. Yes, he did. He expressed remorse and said that he wanted
22 to face the responsibility for what he's done.

23 Q. Do you believe that he has any psychological disorder at the
24 present time that would pose a danger to the community?

25 A. Not to the community.

1 Q. Would it pose a danger to him?

2 A. No, not to him.

3 Q. Does he need mental health treatment?

4 A. I believe he does.

5 Q. And what would be the nature of the treatment he needs?

6 A. I believe he could use some intensive counseling and, you
7 know, maybe insight-oriented therapy so that he could understand
8 triggers and prevent future occurrences, although I feel that
9 any future occurrence would be limited to just one person.

10 Q. Now, just before we went on the break, the Court asked you a
11 few questions. And also let me state, you were in here during
12 the review of the CD --

13 A. Yes, I was.

14 Q. -- DVD. So you watched the images that we've been
15 discussing in court.

16 A. Yes, I did.

17 Q. And have you also reviewed the presentence report in this
18 case?

19 A. Yes.

20 Q. Does either the contents of the presentence report or the
21 images that you saw change the conclusions you reached in your
22 written report?

23 A. Not necessarily.

24 Q. Now, not necessarily sounds like maybe.

25 A. Yes, that's --

1 THE COURT: I thought that, too.

2 Q. So what does that mean?

3 A. Mr. Dean asserts that he loves the victim in this case. And
4 from the perspective of -- if there is such a thing as a normal
5 sexual human being, what I saw on the tapes appeared torturous
6 and heinous, really; but at the same time, there are groups of
7 people that willingly do these sorts of things and act out these
8 kinds of scenarios in order to achieve heightened levels of
9 sexual arousal. I don't know this case well enough to say that
10 that's what they're doing. I have not had the opportunity to
11 interview the victim.

12 THE COURT: I don't quite understand that comment. How
13 can -- first, let me ask you this: Is there any evidence that
14 he had had a relationship with -- is there any evidence that the
15 victim had had a sexual relationship with anyone else?

16 THE WITNESS: Just the husband.

17 THE COURT: No, the victim. Other than her stepfather
18 during this period of time.

19 MS. FREEMAN: Your Honor, there are references in the
20 presentence report to that.

21 THE COURT: Okay. Well, during the ages of 11, 12, and
22 13.

23 THE WITNESS: Oh, no. No, sir.

24 THE COURT: Okay. Then how could it be that the victim
25 could in any way be held accountable for this type of sexual

1 arousalment? Because she would have had to have learned it from
2 the defendant.

3 THE WITNESS: I recall seeing -- I guess the one scene
4 that I was bothered most by, I think she was 27 years old.

5 THE COURT: I'm talking about when she's 13, 12, 13,
6 14, and 15.

7 MS. FREEMAN: Your Honor, may I clarify my question?

8 THE COURT: Pardon me?

9 MS. FREEMAN: I just want to make sure my question was
10 understood.

11 THE COURT: Understood?

12 MS. FREEMAN: Yes, sir.

13 THE COURT: Well, I actually interrupted him, because
14 he said something like how people get aroused by violence.

15 THE WITNESS: Yes.

16 THE COURT: And I'm saying that how could she have ever
17 learned this except from the defendant.

18 THE WITNESS: Oh.

19 MS. FREEMAN: But Your Honor, my understanding was that
20 he was describing Mr. Dean.

21 THE COURT: Mr. Dean?

22 MS. FREEMAN: Yes.

23 THE COURT: Oh, okay, then. Okay. I thought maybe you
24 were including the victim, too.

25 THE WITNESS: No, no. No, sir.

1 THE COURT: Oh, okay.

2 BY MS. FREEMAN:

3 Q. And you have no opinion about the victim and no information
4 that would indicate she is other than a victim in this case.

5 A. That's true.

6 Q. In terms of Mr. Dean's stated belief to you -- and I'm
7 quoting from your report -- I loved her, and that's stated in
8 your report, have you treated people who express an opinion of
9 love towards other people, and yet have done damaging acts
10 towards those people?

11 A. Oh, yes. That's very commonplace.

12 THE COURT: How do you separate that from just anybody
13 who rapes and pillages and claims it's love?

14 THE WITNESS: I was thinking more along the lines of,
15 you know, a man is angry at his wife, who he loves dearly, and
16 he hits her or something like that.

17 THE COURT: Arguably, that's true, but you've seen
18 these tapes.

19 THE WITNESS: Yes, sir.

20 THE COURT: Is there any indication or any way that you
21 could explain the conduct towards the victim other than just
22 heinous? I mean, there's no compassion. There's no feeling.

23 THE WITNESS: That's true.

24 THE COURT: I mean, he literally puts his finger up her
25 when she's asleep.

1 THE WITNESS: Yes, sir. That's true. Uh-huh (positive
2 response).

3 THE COURT: I don't see how you can call that anything
4 other than just heinous.

5 MS. FREEMAN: Your Honor --

6 THE COURT: I'm asking him.

7 THE WITNESS: I think it was a violation.

8 THE COURT: Okay. So I don't see where love comes into
9 this.

10 THE WITNESS: He reports that he was in love with her.

11 THE COURT: Can you -- as I said during the recess
12 while we were looking at the tapes, can you reconcile his claim
13 of love with the conduct we saw on the tape?

14 THE WITNESS: Not necessarily, sir.

15 THE COURT: Go ahead.

16 BY MS. FREEMAN:

17 Q. Have you known people who have loved other people and yet
18 done horrible, damaging things to them?

19 A. Yes.

20 MS. FREEMAN: No other questions, Your Honor.

21 THE COURT: Cross?

22 CROSS-EXAMINATION

23 BY MR. STUMP:

24 Q. Good afternoon, Dr. Ghostley.

25 A. Good afternoon.

1 Q. My name is Nathan Stump. I'm assistant United States
2 attorney. You and I have met before.

3 A. Yes.

4 Q. I've found your testimony credible then and now. I
5 appreciate you being here.

6 You said at one point that you -- that you did not believe
7 that this defendant was a danger to the community. I think your
8 answer was not to the community. And then the question was
9 posed whether he is a danger to himself, and you said, no, not
10 to him.

11 A. Yes, sir.

12 Q. All I want to ask you is, in your opinion, after reviewing
13 those tapes that we played and also interviewing the defendant
14 and what you know about this case, do you have an opinion about
15 whether this defendant poses a danger to anybody?

16 A. I don't think he should be near the victim anymore.

17 Q. Okay.

18 MR. STUMP: Nothing further.

19 THE COURT: Anything else?

20 MS. FREEMAN: No, Your Honor.

21 THE COURT: If his conduct towards the victim -- and
22 I'm saying if -- could not be characterized as love or
23 compassion, can one assume, then, that his conduct towards her
24 is purely one of lust and desire just to sexually abuse her?

25 THE WITNESS: I would say yes.

1 THE COURT: If that's true, then why should he be
2 around any girls?

3 THE WITNESS: I don't think he -- I think the only
4 object of that sort of behavior was the victim in this case. I
5 think he was around a number of children as a bus driver, as a
6 janitor in a church, around his nieces and so forth, and never
7 had any problems with any other children.

8 THE COURT: Well, let me stop you there. You and I saw
9 the tape.

10 THE WITNESS: Uh-huh (positive response).

11 THE COURT: We saw a toddler in one of those tapes, did
12 we not, walking across the screen while the victim is doing a
13 suggestive act?

14 THE WITNESS: Yes, sir.

15 THE COURT: We heard babies crying in the background in
16 some of those scenes.

17 THE WITNESS: Yes, we did.

18 THE COURT: We also saw a tape where the victim's
19 stepsister --

20 THE WITNESS: Was filming.

21 THE COURT: -- was taking pictures of her.

22 THE WITNESS: That's true.

23 THE COURT: And I think it's clear where she got the
24 camera.

25 THE WITNESS: I do, too.

1 THE COURT: How can you say that he is not a threat to
2 other children?

3 THE WITNESS: I guess I was meaning more of a physical
4 or sexual threat to other children. I do believe that that was
5 emotional abuse for him to be doing that with other children
6 around as well as to the victim.

7 THE COURT: Anything else?

8 MR. STUMP: Your Honor, I have just one follow-up
9 question or a couple of follow-ups.

10 BY MR. STUMP:

11 Q. Dr. Ghostley, in anything that you reviewed, did you learn
12 that this defendant had also videotaped another young woman at
13 any point?

14 A. I don't know of anything like that.

15 Q. Okay. Did you know or did you look at any videos in which
16 the defendant went on vacations and filmed other women?

17 A. All I saw was the compilation today. I've got a part in my
18 report that outlines the data sources that I used to write my
19 report. I just saw the preinvestigation report today as well.

20 Q. If you knew -- Let me change the question.

21 A. Okay.

22 Q. If you knew that this defendant had videotaped other young
23 women in suggestive ways -- for instance, through the crack of a
24 bathroom door, through an open window, across a neighbor's
25 fence, that kind of thing -- would that change your opinion in

1 any way, have any impact on your --

2 A. It could. It very likely could, yes.

3 MR. STUMP: Nothing further.

4 THE COURT: Thank you, unless Ms. Freeman has some more
5 questions.

6 MS. FREEMAN: No, I have no other questions. Your
7 Honor, we have no other proof.

8 THE COURT: Pardon me?

9 MS. FREEMAN: We have no other evidence to present.

10 THE COURT: Anything else from the government?

11 MR. STUMP: Your Honor, we would, just in rebuttal to
12 that, recall Corporal Duckett to the stand.

13 THE COURT: Okay.

14 CORPORAL REGINA DUCKETT, the witness, having been duly
15 sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. STUMP:

18 Q. Corporal Duckett, you were just in court for Dr. Ghostley's
19 testimony, right?

20 A. That's correct.

21 Q. And you heard that last question I asked him about various
22 hypotheticals: If there were videos of this or that, would that
23 change your opinion. Did you hear that question?

24 A. That's correct. I did.

25 Q. In the course of your investigation, did you find any

1 evidence that fits any of the hypotheticals I posed?

2 A. Yes. There were several videotapes involving family
3 vacations where the defendant would zoom in on a random female,
4 like at an amusement park or on the beach, either the breast or
5 the buttock area. There are some videos involving other family
6 members where he did the same thing either at family gatherings,
7 in the pool area. There was one instance where he was filming
8 outside of a bedroom window when the victim and one of her
9 cousins was changing clothing, and it was of -- they did become
10 nude, topwise, in that video.

11 Q. And about what age were they in that video, do you
12 remember?

13 A. I believe they were teenaged, I believe.

14 Q. Anything else?

15 A. No.

16 THE COURT: Cross?

17 MS. FREEMAN: Yes.

18 CROSS-EXAMINATION

19 BY MS. FREEMAN:

20 Q. Other than the last scene that you described, these people
21 were clothed; is that correct?

22 A. In bathing suits or -- yes.

23 Q. And this is --

24 MS. FREEMAN: No other questions, Your Honor.

25 THE COURT: Okay. Anything else?

1 MR. STUMP: No, sir.

2 THE COURT: Okay. We'll take a five-minute recess, and
3 we'll come back and I'll hear your arguments.

4 (Recess was taken at 2:27 p.m. until 2:36 p.m., at which
5 time the proceedings reconvened, as follows:)

6 THE COURT: I'll hear from the government.

7 Well, actually, I'll hear from probation first and then
8 the government and then the defendant.

9 PROBATION OFFICER: From probation?

10 THE COURT: Yes.

11 PROBATION OFFICER: As far as my recommendation?

12 THE COURT: Yes.

13 PROBATION OFFICER: Yes, sir. The probation office
14 would recommend the maximum allowable sentence under the
15 sentencing guidelines of 30 years, which is 20 years on count
16 one to be followed by ten years consecutive on count two.

17 THE COURT: Okay. And that would be a guideline
18 sentence?

19 PROBATION OFFICER: That would be within the guideline
20 range.

21 THE COURT: Anything under 30 years would be -- would
22 not be a guideline sentence?

23 PROBATION OFFICER: That's correct.

24 THE COURT: Over 30 years would not be a guideline
25 sentence?

1 PROBATION OFFICER: That's correct.

2 THE COURT: Now, why do you recommend that sentence?

3 PROBATION OFFICER: Well, Your Honor, after looking at
4 the circumstances of the instant offense, after further -- after
5 reviewing the tapes -- which I never have reviewed them, I just
6 simply read a summary prepared by someone else -- as one of our
7 former judges, Senior United States District Court Judge Robert
8 Varner, used to say all the time, I think he's worked hard for
9 it, and he's entitled to the maximum allowable sentence. This
10 has been probably one of the most degrading and humiliating
11 child pornography offenses that I have personally reviewed, and
12 I've done at least about 15 in this district. If any other
13 child pornography case would deserve the maximum, it would be
14 this one.

15 THE COURT: Okay. I'll hear from the government.

16 MR. STUMP: Your Honor, the United States concurs with
17 the recommendation of the probation office. Because of the way
18 the indictment was written and the charges were brought in this
19 case, there is a statutory maximum of 30 years. The guideline
20 range for that statutory maximum would be life imprisonment. We
21 would recommend life imprisonment, but we can't. We're stuck
22 with 30 years, so we're recommending 30 years.

23 I second what Ms. Caple said. I handle the bulk of the
24 child pornography cases from my office. This is by far the most
25 disturbing. The reason why, Your Honor, is that in most of the

1 pornography cases I have, there is a victim in a photograph; and
2 you look at a single photograph or maybe a video clip, and you
3 say, there's an instance where a child was abused by somebody
4 who should definitely know better, and it's disturbing, but
5 that's it. And that child is presumably rescued or found
6 somewhere, or you at least have the peace of mind of knowing
7 that somewhere, somehow, they have found this child, and she's
8 okay.

9 In this case, Your Honor, the painful part about this
10 is watching the evidence that goes on and on and on from the
11 time she is little bitty, 11 or 12 years old, until the time she
12 is 27 years old. And it goes on and on, and no one comes to
13 rescue her. And that, Your Honor, I believe is extremely
14 important when considering whether to go below the 30 years,
15 below the guidelines in this case as the defense would like you
16 to do.

17 Your Honor, there may be a time when a defendant comes
18 into a courtroom, having committed this kind of conduct, and he
19 receives less than the statutory maximum. But I am confident
20 that this is not that defendant, this is not that courtroom, and
21 this is not that day. Thirty years, Your Honor.

22 THE COURT: Ms. Freeman?

23 MS. FREEMAN: Your Honor, I think that it's no question
24 that a 30-year sentence is a life sentence for Jack Dean if the
25 Court --

1 THE COURT: How old is he now?

2 MS. FREEMAN: Fifty-nine, Your Honor. Sixty.

3 THE COURT: Sixty?

4 MS. FREEMAN: Sixty, Your Honor.

5 I would also point out --

6 Your Honor, I ask the Court to step back from this case
7 for a moment.

8 THE COURT: To be candid with you, Ms. Freeman, I took
9 recesses to do that.

10 MS. FREEMAN: And I appreciate that.

11 THE COURT: I think it's important to retain some
12 objectivity, and I think one has to step back. I think you're
13 absolutely right.

14 MS. FREEMAN: I also think that -- and I don't mean
15 this disrespectfully at all to Mr. Stump, but the rationale that
16 he described for why a single image of an unknown child is less
17 troubling is, in fact, not realistic and not, in fact, the
18 reality that many of those children experienced. So I think in
19 many respects, no one in this room can say, in fact, this is the
20 worst thing that ever happened.

21 THE COURT: You know what disturbs me the most -- and
22 you're getting to the point, and I'll pose it to you right now.
23 I've sat through a number of child pornography cases, both
24 during the trial and at sentencing. And the defendants there
25 owned child pornography; that is, they possessed pictures with

1 children in sexually explicit positions and so forth. So there
2 the defendant was guilty of having just owned the pornography.
3 What is most disturbing about this case is I think this may be
4 the first case I've had where the defendant actually did the
5 pictures.

6 MS. FREEMAN: Yes, sir.

7 THE COURT: And not only did the pictures, but did
8 pictures of torture. And I have had a case where -- well, no, I
9 haven't had one where the defendant did the pictures himself.
10 But the pictures of torture where -- and you heard it. The
11 victim here was literally squealing and crying for help, saying,
12 stop, stop, stop. And I'm not talking about when she's 27 years
13 old. This is when she's a minor. And literally just begging to
14 be -- for the torture to stop.

15 MS. FREEMAN: And Your Honor, what I would say to that
16 is the statutory maximum for the production of that video and
17 those videos is 20 years. That's the statutory maximum. Not
18 30. Twenty years. The possession of child pornography is the
19 possession of that video; the possession of the videos that he
20 made.

21 THE COURT: But the statutory maximum total here is 30
22 years, is it not?

23 MS. FREEMAN: Only if the Court were to run it
24 consecutive. And the fact is that the possession was part of
25 the production. He would not have possessed those but for

1 producing them.

2 THE COURT: But the -- I still don't see how I can get
3 around ignoring that evidence.

4 MS. FREEMAN: Well, I think that --

5 THE COURT: And why, under 3353, I shouldn't.

6 MS. FREEMAN: Your Honor, first I think that the Court
7 needs to acknowledge that he is facing three serious criminal
8 charges in the state for this conduct.

9 THE COURT: That's another question. Is he?

10 MS. FREEMAN: Yes, he is, Your Honor.

11 THE COURT: What are these charges and what's the
12 posture of those charges?

13 MS. FREEMAN: As described in the presentence report,
14 he is charged with sexual torture, which is a class A felony
15 that carries from 10 years to life or 99 years. He's charged
16 with sodomy in the first degree, which is also a class A
17 felony. And he's charged with sexual abuse in the first degree,
18 which is a class C felony. And according to the presentence
19 report, and it's my understanding those charges are still
20 pending, he has been here in custody all this time on a writ
21 from the state court.

22 THE COURT: Do those charges include the incidents
23 while she was a minor or just the incident when she was 27 or do
24 you know?

25 MS. FREEMAN: Your Honor, number one, I don't know.

1 Number two, I believe that there is not a statute of limitations
2 in the state system for sexual offenses against children. So I
3 believe that they potentially could include those.

4 THE COURT: Okay.

5 PROBATION OFFICER: Your Honor, could I add to that?
6 I'm sorry. I do have those listed under pending charges, but I
7 was told that the charges as to Mr. Dean were no-billed and that
8 they would proceed as to the case against Mr. Haigler.

9 THE COURT: I actually saw that in the presentence
10 report, too, that the state charges were no-billed, and I was
11 going to ask about that later. Why were they no-billed?

12 PROBATION OFFICER: On the belief that we would proceed
13 in the federal offense.

14 MR. STUMP: Your Honor, I've spoken with the deputy
15 district attorney with regard to Mr. Dean's state case, and
16 she's advised me that although they are prepared to go forward
17 in the state, that they were deferring to federal prosecution.
18 And based upon what they expect the sentence will be, they don't
19 have any plans to press charges after this date.

20 MS. FREEMAN: All I know is, Your Honor, he's here on a
21 writ, and nobody has released him from state custody.

22 THE COURT: Go ahead.

23 MS. FREEMAN: Thank you, Your Honor.

24 So I think it's important to note that much of the
25 conduct that we are all reacting to that's depicted on these

1 videos are, in fact, the state law offenses. What he's here for
2 is producing these videos, and the statutory maximum for that
3 offense is 20 years.

4 I think it's also important to just acknowledge the
5 history of the sentencing guidelines as it relates to sex
6 offenses. When the Supreme Court adopted *Booker*, they talked
7 about -- and particularly in the *Kimbrough* case, they discussed
8 why the sentencing guidelines took effect; what the purpose of
9 the guidelines initially was; what the role of the commission
10 was. They talked about the fact that the guidelines were to
11 create a system of punishment which was proportional, which
12 controlled crime through incapacitation and deterrence, and
13 which addressed rehabilitation. And the commission was set up
14 to use data on past practices and recidivism in formulating the
15 guidelines.

16 The original guidelines were based on calculations
17 based on a review of over 10,000 presentence reports. However,
18 over time the guidelines relating to child sex offenses have
19 been changed numerous times, increased numerous times, not on
20 the basis of empirical data gathered by the commission, but in
21 response to congress simply changing the law and knee jerk
22 reaction as to the law.

23 Thus, the first offense, the production, was not even a
24 federal law violation. And I think the state would agree that
25 that production was not an offense at the time the original --

1 not a federal law offense at the time of the acts depicted that
2 we saw here today, before 2003. It was only the duplicating of
3 a video that had been made in 1992 that created a federal
4 offense. And the only way that the government can even
5 establish that that federal offense fell under the 2003 law was
6 by tracking the date of the physical material onto which it was
7 duplicated. So the fact is that these harsh guidelines were not
8 always this harsh for this type of conduct, and they have been
9 raised, not in response to any new understanding of sex offenses
10 or new understanding of the purposes of sentencing, but simply
11 in response to congressional directives that are not based on --

12 THE COURT: What is your response, though, to the fact
13 of this case, that the guideline sentence is actually life? If
14 I were applying a guideline sentence, I should be giving him
15 life. Arguably, as you said before, because of his age, he
16 might, in effect, be getting a life; but to the extent you're
17 arguing about how the guidelines are unreasonable, in this case,
18 because of the statutory maximum, he's actually getting a
19 sentence that is significantly below the guidelines.

20 MS. FREEMAN: Your Honor, I think that's a hypothetical
21 construct, because clearly 30 years is life for Mr. Dean. And
22 it --

23 THE COURT: But hypothetical concept is what you're
24 talking about when you argue about what the commission did.
25 That's what we're talking about here. It's how the commission

1 acted, not about this particular defendant. So what I'm trying
2 to do now is say, well, let's delete the defendant from the
3 picture and talk about the commission. Here he should be
4 getting life if we're talking about the guidelines.

5 MS. FREEMAN: Well, I think that in -- when we're
6 operating in a system where there is no parole, for most
7 defendants who enter the system, there is no difference between
8 life and 30 years.

9 THE COURT: Okay.

10 MS. FREEMAN: Your Honor, I would also point out that
11 the guidelines for the second offense, as the presentence report
12 notes on page -- I think it's on page -- page nine and paragraph
13 20 --

14 THE COURT: This is of the presentence report?

15 MS. FREEMAN: Yes, sir. The guideline range for the
16 possession under the 2007 guidelines was --

17 THE COURT: Wait a minute. What page are we looking
18 at?

19 MS. FREEMAN: I'm looking at page nine, the top
20 paragraph, paragraph 20, the last line.

21 THE COURT: I have it here.

22 MS. FREEMAN: The guideline for the possession itself,
23 which occurred in 2007, is 35. And that's before acceptance of
24 responsibility, which would reduce it to 32. 32 is 121 to 151
25 months. So, again, it's a production that occurred before

1 congress even made that a federal law violation, and possession
2 that under the present guidelines, as harsh as they are, tops
3 out at 151 months. In addition, if this had been charged -- and
4 I'm not saying that the government is dilatory in any way.
5 But obviously, the guidelines in effect when the conduct took
6 place that even brings it within the jurisdiction of this Court
7 in 2003 and 2004, those guidelines for count one would have
8 placed the sentencing range at 27 for a range of 70 to 87
9 months.

10 Now, there is just simply nothing that has happened in
11 our knowledge of sentencing or of the nature of this offense
12 that has led to any general consensus at all, and certainly to
13 no data before the sentencing commission that says a sentence --
14 an offense that was worth 70 to 87 months in 2003 is now worth
15 30 years to life five years later. And --

16 THE COURT: That would only be as to count one, right?

17 MS. FREEMAN: Yes, sir.

18 THE COURT: What would be 20 years?

19 MS. FREEMAN: Count one would be 70 to 87 months. The
20 present guideline range for count two would be 32, which is 121
21 to 151 months.

22 THE COURT: Well, let's just hypothetically talk about
23 if the Court had before it count one as it existed in 2003.

24 MS. FREEMAN: Yes, sir.

25 THE COURT: That would be the guideline range of 70 to

1 87 months?

2 MS. FREEMAN: Yes, sir.

3 THE COURT: I still can't close my eyes to the torture
4 in this case. What's your argument that I shouldn't vary upward
5 based on that alone?

6 MS. FREEMAN: Your Honor, first of all, the torture
7 that we saw today occurred after the age of 18.

8 THE COURT: No. The spanking was before 18. And she
9 was squealing.

10 MS. FREEMAN: Yes, sir.

11 THE COURT: I saw that.

12 MS. FREEMAN: Your Honor, I'm not arguing with the
13 Court.

14 THE COURT: He was hitting her so hard that she was
15 just crying. She was literally crying for help.

16 MS. FREEMAN: I withdraw the statement.

17 THE COURT: She was begging him to stop.

18 MS. FREEMAN: Yes, sir.

19 THE COURT: And he just kept at it and kept at it and
20 kept at it. I can't capture in words what he did to her. My
21 words are inadequate. But go ahead.

22 MS. FREEMAN: The fact is that that is a state law
23 violation. And what the Court has --

24 THE COURT: The fact is that before -- even under the
25 2003, I could have given him a variance for that conduct. So

1 you still haven't closed my eyes to that conduct.

2 MS. FREEMAN: I understand that, Your Honor. The
3 statutory maximum, however, was 20 years.

4 THE COURT: Right.

5 MS. FREEMAN: There was no mandatory minimum at that
6 time, I believe, and the guideline range was 70 to 87 months.
7 And that's with an enhancement for the conduct that we saw
8 today.

9 I have nothing further to say, Your Honor.

10 THE COURT: Thank you. Anything else? I think
11 Ms. Freeman is right. I think I should be objective. I'll take
12 another five minutes, and then I'll announce the sentence,
13 unless you have something else.

14 MR. STUMP: Your Honor, may I add one thing before you
15 go, and that is, we were certainly hamstrung in this case. I
16 want to make sure everyone in the gallery understands and Your
17 Honor understands that we -- there is a federal statute that
18 prohibits the production of child pornography. It's 18 USC
19 Section 2251. We were hamstrung in our ability to charge
20 Mr. Dean with a violation of that statute because at the time
21 that the conduct occurred, the statute as written did not allow
22 for federal jurisdiction based upon the movement of the
23 materials that were used to produce that depiction in interstate
24 commerce. That didn't come until 1998, which, coincidentally,
25 was the year that the victim turned 18. Had we been able to

1 charge this defendant with a violation of Section 2251, we would
2 have no doubt charged him with that for each and every instance
3 that this occurred. At the time that the conduct took place,
4 the statutory maximum for 2251 was ten years. Today it's a
5 15-year minimum. Back then we would have charged him with
6 multiple counts of 2251 and stacked them, ten years for each
7 one, and he would be looking at well over 30 years as a
8 potential penalty. So 30 years, in the government's
9 estimation --

10 THE COURT: Ms. Freeman's point is, though --

11 MR. STUMP: Your Honor, I believe her point is that the
12 guidelines --

13 THE COURT: She's just saying that the statute and the
14 guidelines have changed, and there's no empirical evidence to
15 support the change.

16 MR. STUMP: And what I want to say, Your Honor, is that
17 she's talking about the specific charge in this case. But if
18 the Court looks at the underlying conduct at issue, that conduct
19 was prescribed by 2251 a long time ago, and there were penalties
20 set in place for that a long time ago. And those penalties, if
21 that statute could have been charged and was charged, would have
22 added up to much more than 30 years in this case. So there -- I
23 believe that that argument that this is somehow a bigger
24 sentence than he would have received back then is in itself a
25 fallacy.

1 MS. FREEMAN: And Your Honor, I think -- I disagree
2 with that because when he says if it could have been charged, it
3 would have been charged, the fact is it can't be charged. It
4 could not be charged. And so that's where we are. That -- what
5 he says, as if this were a different world, he would be facing
6 more time. It's not a different world. He's not facing that
7 time. They couldn't charge that. What the Court has to
8 consider is what they could charge and how there is now a
9 dramatic increase in the penalty for no reason at all.

10 THE COURT: Thank you. We'll take a five-minute
11 recess.

12 (Recess was taken at 2:57 p.m. until 3:07 p.m., at which
13 time the proceedings reconvened, as follows:)

14 THE COURT: Will the defendant stand at the lectern
15 with his attorney.

16 Now, the offense level here, Ms. Caple, is it 45 or
17 43?

18 PROBATION OFFICER: It is now 43.

19 THE COURT: Okay. The fine range remains the same; is
20 that correct?

21 PROBATION OFFICER: Yes, sir.

22 THE COURT: Okay. Mr. Dean, I will now announce the
23 proposed sentence. I will give you another opportunity to make
24 comments before I decide whether to impose the sentence as
25 announced.

1 In compliance with *United States v. Booker*, this Court,
2 while not bound to apply the guidelines, has consulted them and
3 has taken them into account on the issue of the appropriate
4 range of sentence to be imposed in this case. Having made
5 findings as to the objections to the presentence report, the
6 Court finds that the offense level is 43, the criminal history
7 category is I, the authorized guideline sentence for count one
8 is 20 years, and the authorized guideline sentence for count two
9 is 10 years; the authorized term of supervised release for count
10 one is two to three years, and the authorized term of supervised
11 release for count two is any term not less than five years, up
12 to and including life. The fine range for this offense is
13 25,000 to \$250.

14 Before I do this, is there anything that he wanted to
15 say to me before I announce the sentence?

16 THE DEFENDANT: Yes, sir. I just want to tell Your
17 Honor and --

18 THE COURT: Speak a little bit more slowly so that I
19 can hear you.

20 THE DEFENDANT: I just wanted to ask the victim for
21 forgiveness. I'm sorry that I put her through all of that
22 torture, and I'm -- I'm terribly sorry that -- I don't know what
23 come over me. I just -- it was -- I should have never done them
24 cruel things and everything. I'm so sorry that I did that. I
25 just want my family over here to know that I'm the one that did

1 all of this, and I'm just so sorry for it. I've got God in my
2 life now, and I'm hoping that the victim will forgive me for
3 what I've done to her over the years.

4 That's all I've got to say.

5 THE COURT: The fine range is from 25,000 to \$250,000.

6 Having considered and consulted the sentencing
7 guidelines and evaluated the reasonableness of a sentence
8 through the lens of Title 18 United States Code Section 3553, it
9 is the order, judgment, and decree of the Court that the
10 defendant, Jack Furman Dean, is committed to the custody of the
11 Federal Bureau of Prisons to be imprisoned for a term of 360
12 months. This term consists of terms of 240 months as to count
13 one and 120 months as to count two, to be served consecutively
14 to the term imposed on count one. The Court finds the sentence
15 imposed is sufficient but not greater than necessary to comply
16 with the statutory purposes of sentencing, in particular those
17 factors found in Section 3553(a), such as the nature and
18 circumstances of the offense; the history and characteristics of
19 the defendant; to reflect the seriousness of the offense; to
20 promote respect for the law; to provide just punishment for the
21 offense, and to protect the public from further crimes. And
22 there are other factors listed in 3553(a) that the Court has
23 considered as well.

24 The Court recommends that the defendant be designated
25 to a facility where sex offender treatment is available.

1 It is further ordered that upon release from
2 imprisonment, the defendant shall be placed on supervised
3 release for a term of life. The term consists of terms of three
4 years as to count one and life as to count two, such terms to
5 run concurrently.

6 Within 72 hours of release from custody, the defendant
7 shall report to the probation office in the district to which he
8 is released.

9 It is further ordered that while on supervised release,
10 the defendant shall comply with the mandatory and standard
11 conditions of supervised release on file with the Court.

12 The Court also orders the following special
13 conditions: The defendant shall register as a sex offender
14 as required by law. The defendant shall participate in a
15 program approved by the United States Probation Office for the
16 treatment and monitoring of sex offenders. The defendant
17 shall have no contact with children under the age of 18 and
18 will refrain from entering into any place where children
19 normally congregate without the written approval of the
20 Court. The defendant shall have no direct or indirect contact
21 with the victim in this case. The defendant shall not possess
22 any form of pornography, sexually stimulating, or sexually
23 oriented material depicting children under the age of 18. The
24 defendant shall not enter any location where such pornography
25 or erotica can be accessed, obtained, or reviewed. The

1 defendant shall not possess a computer or any device that can
2 access the Internet, except that the defendant may, with the
3 approval of the probation officer, use a computer in connection
4 with authorized employment. The defendant shall consent to
5 third-party disclosure to any employer or potential employer
6 concerning any computer-related restrictions that are imposed
7 upon him. The defendant shall submit to a search of his person,
8 property, house, residence, vehicle, papers, computer, or other
9 electronic communications or data storage devices or media and
10 consents to search at any time with or without a warrant by any
11 law enforcement or probation officer with reasonable suspicion
12 concerning a violation of a condition of supervised release or
13 unlawful conduct and by any probation officer in the lawful
14 discharge of the officer's supervision functions. The defendant
15 shall pay to the United States District Court Clerk a special
16 assessment fee of \$200, which is due immediately. Because of
17 his inability to pay, the Court waives the imposition of a
18 fine. The Court further finds there is no identifiable victim
19 who incurred a financial loss as a result of this offense.

20 Now, I recognize, as Ms. Freeman aptly pointed out,
21 this is tantamount to a life sentence for you, Mr. Dean. And
22 you probably will live another 20, and if you're lucky, 30
23 years. Unfortunately for the victim here, she also has received
24 a life sentence, and her sentence is going to be another 60
25 years. So it's unfortunate for both of you. But when we talk

1 about life sentences, there are two life sentences that have
2 been in many ways given as a result of what happened here.

3 I did consider the request for the variances, but even
4 under the guideline as Ms. Freeman would love for me to apply, I
5 think the sentence is still fair.

6 I ask you at this time, are there any objections to the
7 sentence imposed or to the manner in which the Court pronounced
8 it other than those objections previously stated for the
9 record? For example, do you have any objection to the Court's
10 ultimate findings of fact or conclusions of law? Furthermore,
11 you are instructed that if you have an objection, you must not
12 only state the objection, you must give the grounds for the
13 objection.

14 MS. FREEMAN: Yes, Your Honor, several objections.
15 First, the Court's order that Mr. Dean not possess or use a
16 computer or any device that can access the Internet. This
17 offense in no way involved the Internet or the use of a
18 computer. There is no basis for that condition, and I would ask
19 that it be removed.

20 THE COURT: Let's take that up first. Why do we have
21 that in here?

22 PROBATION OFFICER: Your Honor, the way we have
23 reviewed this case, Mr. Dean does have a problem with child
24 pornography. And as the United States Probation Office knows
25 that child pornography is easily accessed through Internet

1 devices, this is a treatment and a precaution condition that
2 we would put on the defendant while he is under the supervision
3 of the probation office. Because first and foremost, our number
4 one job is to protect the community, and that would be including
5 any children in child pornography videos and downloads.

6 THE COURT: Okay. I'll hear from the government.

7 MR. STUMP: Your Honor, the United States concurs with
8 the recommendation of the probation office in this case, not
9 only for the treatment of this defendant, but also just for the
10 safety of the online community as well if and when he is
11 released.

12 THE COURT: Anything else, Ms. Freeman?

13 MS. FREEMAN: Yes, Your Honor. This offense --

14 THE COURT: No, I mean about this particular provision.

15 MS. FREEMAN: No.

16 THE COURT: The objection is overruled. I think there
17 is sufficient evidence in the case that the defendant was
18 enticed by the fact that the victim here was under 18 years of
19 age. And as a result, I think there is evidence that would
20 support, contrary to what the psychologist said, that the victim
21 would be interested in minor people -- minor children. I
22 further find evidence here that he did use tapes and so forth,
23 and I think that probation is right. It is purely a measure
24 to -- for treatment that such a provision is warranted.

25 MS. FREEMAN: Your Honor, I object to the provision

1 that he not have any contact with children under the age of 18.
2 And I may need to request clarification.

3 THE COURT: That's under the age of 18 -- go ahead.
4 Ask for your clarification.

5 MS. FREEMAN: Well, first, Your Honor, because this is
6 a life sentence, effectively, and Mr. Dean has several
7 grandchildren, I would not want the Bureau of Prisons to rely on
8 this provision to prohibit his grandchildren from visiting him
9 in an appropriate Bureau of Prisons facility. The Bureau of
10 Prisons has no unsupervised visitation. There would be no
11 dangerous -- danger to the children or to any child in the
12 region at all, and we therefore ask that that be lifted. That
13 is simply not necessary and should not be there for the
14 restriction of his supervision while in the Bureau of Prisons.

15 THE COURT: I'll hear from probation.

16 PROBATION OFFICER: While probation is under the
17 understanding there would be no unsupervised visits within the
18 Federal Bureau of Prisons, again, I am looking at the victim in
19 particular, society as a victim, and any child who may have
20 occasion to be harmed by this particular defendant.

21 THE COURT: Now, this is a provision that only applies
22 after he comes out on supervised release.

23 MS. FREEMAN: That was my request for clarification. I
24 don't --

25 THE COURT: No. This provision only applies as a

1 condition of supervised release. I would further clarify that
2 the provision does not apply while he's in prison.

3 MS. FREEMAN: And that's what I request, Your Honor.

4 THE COURT: Yes.

5 MS. FREEMAN: I think that should we ever see Mr. Dean
6 on supervised release, we would request some modifications of
7 that.

8 THE COURT: The judgment should expressly reflect that
9 this provision should not apply while he is in prison. In
10 fact, I don't think any of these provisions apply while he's in
11 prison. I think the prison can do whatever it wants to do.

12 MS. FREEMAN: Well, I think they rely on the Court's
13 recommendations to determine what they'll do, Your Honor.

14 THE COURT: But I think he should see his
15 grandchildren. I think that would be good for him and for them.

16 MS. FREEMAN: Your Honor, I object to the consecutive
17 sentences. I understand the Court's basis for imposing
18 consecutive sentences, but I would point out that count two is,
19 in effect, a lesser included offense of count one, and
20 therefore, for that reason as well, a consecutive sentence is
21 inappropriate.

22 THE COURT: Why didn't you bring this up before?

23 MS. FREEMAN: I think I did.

24 THE COURT: I don't remember any lesser included
25 offense argument being presented to the Court.

1 MS. FREEMAN: I think I said those magic words earlier
2 today, Your Honor.

3 THE COURT: I'm confident that I -- if it did, I sure
4 didn't hear it.

5 Does the government remember a lesser included offense
6 argument?

7 MR. STUMP: No, sir.

8 THE COURT: Because I did not research that issue. I
9 have not looked at it. And, you know, it's one of those things
10 I would have researched.

11 MS. FREEMAN: Well, it's possession of child
12 pornography. It's possession of pornography that he created and
13 produced. His production of that pornography is the basis for
14 count one. It seems to me it's pretty clear that count two is a
15 lesser included offense of count one.

16 THE COURT: And what is count two?

17 MS. FREEMAN: Count two is the possession of child
18 pornography with a statutory maximum of ten years.

19 THE COURT: And count one is what, now, the
20 production?

21 MS. FREEMAN: Production of child pornography with a
22 statutory maximum of 20 years.

23 MR. STUMP: Your Honor, count one addresses the conduct
24 of reproducing certain already recorded images and depictions
25 onto DVDs. That's count one. Count two encompasses not only

1 those DVDs, but all of the other child pornography images that
2 this defendant possessed of the victim in this case. We don't
3 believe that this second count is a lesser included charge. I
4 think that's something that if the defense felt that way, they
5 could have raised it a long time ago and we could have briefed
6 and addressed.

7 THE COURT: I'm going to say this. If the defendant
8 wants to raise this issue, why don't you raise it by a motion
9 for new trial, and I'll set it for briefing.

10 MS. FREEMAN: Yes, Your Honor.

11 THE COURT: And you need to look at the record to see
12 also whether it's timely.

13 MS. FREEMAN: Your Honor, I would simply point out that
14 the facts as described by Mr. Stump are that all of these images
15 are of the victim, and they were produced by Mr. Dean.

16 THE COURT: Again, if you wish to raise this issue,
17 I'll consider it on a motion for new trial.

18 MS. FREEMAN: Yes, sir.

19 THE COURT: Make sure it's filed immediately so we can
20 set it for briefing.

21 MS. FREEMAN: Yes, sir.

22 THE COURT: Anything else?

23 MS. FREEMAN: Only the objections that I raised earlier
24 regarding the calculation of the sentencing guidelines.

25 THE COURT: And those are all preserved. Anything

1 else?

2 MS. FREEMAN: And, Your Honor, we object that this
3 sentence is not reasonable under the factors of 3553(a).

4 THE COURT: All right. Anything else from Mr. Dean?

5 MS. FREEMAN: No.

6 THE DEFENDANT: No, sir.

7 THE COURT: Okay. Then, Mr. Dean, do you have
8 anything to say as to why the sentence as announced should not
9 be imposed or do you have anything to say in mitigation of the
10 sentence?

11 THE DEFENDANT: I want to say I'm sorry to everybody in
12 this courtroom today. That's all I've got to say.

13 THE COURT: Mr. Dean, it is the order, judgment and
14 decree of the Court that the sentence as announced is hereby
15 imposed. Now you have ten days to file any notice of appeal.
16 If you cannot afford the cost of an appeal, the Court will allow
17 you to appeal at no cost, including furnishing you with a free
18 transcript and a free attorney.

19 As to that last objection about concurrent sentences,
20 that objection is overruled, subject to if the defendant wants
21 to file any motion for reconsideration.

22 You are in the custody of the marshal.

23 (Proceedings concluded at 3:25 p.m.)

24 * * * * *

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COURT REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript
from the record of the proceedings in the above-entitled matter.

This 31st day of December, 2008.

/s/ Patricia G. Starkie
Registered Diplomate Reporter
Certified Realtime Reporter
Official Court Reporter